



**Schwaninger & Associates, P.C. Attorneys at Law**

1331 H Street, N.W., Suite 500, Washington, DC 20005

Internet Address - <http://www.sa-lawyers.net>

telephone - (202) 347-8580

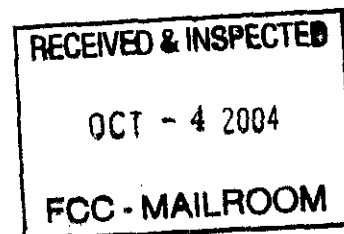
facsimile - (202) 347-8607

Robert H. Schwaninger, Jr.  
Richard P. Hanno

Vic Jackson  
Interconnection Consultant

DOCKET FILE COPY ORIGINAL

September 29, 2004



Michael Wilhelm, Chief  
Public Safety and Critical Infrastructure Division  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 Twelfth Street, S.W., 4<sup>th</sup> Floor  
Washington, D.C. 20554

Re: **900 MHz Application Freeze (DA 04-3013)**  
**(WT Docket 02-55)**

**Opposition To Freeze Notice On Behalf Of**  
**Advanced Metering Data Systems, L.L.C.**

Dear Chief Wilhelm:

We represent the interests of Advanced Metering Data Systems, a provider of wireless data systems for the monitoring and delivery of electric power by utility companies throughout the United States. AMDS' system employs 900 MHz channels to deliver critical information regarding the status of electric usage and to backhaul to service providers necessary data regarding outages. AMDS' equipment has been instrumental in assisting utility providers in identifying outages arising from recent hurricanes and other natural disasters, allowing repair crews to respond rapidly and to bring service back to customers in a manner that serves greatly the public's need for electrical service.

AMDS has carefully considered the Bureau's recent freeze on the acceptance of 900 MHz applications and the response to that freeze filed by the United Telecom Council. AMDS supports and concurs with the analysis provided to the Bureau by UTC in its letter of September 23, 2004. The justification provided by the Bureau for its action cannot be supported by a plain reading of the Commission's Order in WT Docket No. 02-55. Nor can the freeze be supported by any reasonable effort to spare the agency's administrative resources and to assure fidelity to the Commission's processes.

By: [Signature] 10/1/04  
List 12-123

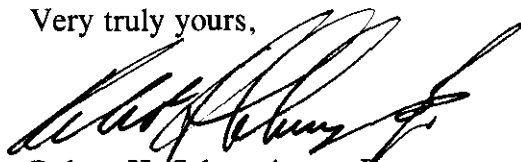
AMDS was aware of the consolidation of 900 MHz spectrum by ACI 900, Inc., a wholly owned subsidiary of Nextel Communications, Inc., and was surprised that the Bureau did not take immediate steps to halt ACI 900, Inc.'s efforts to improperly tie up these scarce spectrum resources via applications which are entirely disingenuous on their face. The content of the applications states that the use of the channels by ACI 900, Inc. will be for non-commercial internal purposes. In plain language, this statement within the applications defies logic and must be viewed, without substantial supporting information, as simply false.

What is further vexing is that the Bureau's analysis in its freeze notice does not consider the repeated claim within the applications. If the intended use of the ACI 900, Inc. proposed systems is only to provide internal communications needs to this hollow entity, then what possible application would the channels have to providing "green space" to Nextel Communications, Inc. to assist it in rebanding the 800 MHz spectrum? And if the intent of the applications is to create additional spectrum reserves for Nextel Communications, Inc. to employ in a manner suggested by the Bureau in its freeze order, then the statements made within the applications pursuant to 18 U.S.C. §1001 and 47 C.F.R. §1.17 are in contradiction to this intended purpose.

Given these obvious contradictions, the Bureau was positioned to simply dismiss the applications. If the Bureau required additional information prior to taking this step, the Bureau could have demanded from ACI 900, Inc. that it immediately provide additional information in accord with 47 U.S.C. §308(b) that demonstrated with certainty that the applications were filed in good faith and did not evince an abuse of the Commission's processes. This stated, the Bureau's response via the freeze notice impedes the use of the 900 MHz band for all PLMR licensees and directs the agency's focus away from protecting the rights of legitimate applicants while providing an unnecessary, improper, and legally unsupportable boon for Nextel aka ACI 900, Inc. AMDS respectfully states that the Bureau's action is a wholly incorrect response to ACI 900, Inc.'s attempt at improper consolidation of the spectrum.

Accordingly, AMDS joins with UTC in its objection to the freeze and concurs with UTC that the ACI 900, Inc.'s applications are inappropriate, disingenuous, and subject to summary dismissal, in conjunction with an immediate lifting of the freeze.

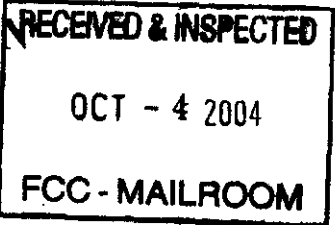
Very truly yours,



Robert H. Schwaninger, Jr.  
Counsel for Advanced Metering Data  
Systems, L.L.C.

cc: Marlene Dortch, Secretary  
Robin Cohen, ACI 900, Inc.  
Jill Lyon, United Telecom Council

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554



In the Matter of )

900 MHz Applications Freeze )

and )

Various Applications Pending For 900 MHz )

Channels Filed By ACI 900, Inc. )

DA-04-3013

WT Docket No. 02-55

**PETITION FOR RECONSIDERATION**  
**EXPEDITED TREATMENT REQUESTED**

Small Business in Telecommunications (SBT) a consistent commenter in Docket 02-55, whose members include licensees of 900 MHz channels for the operation of legitimate businesses throughout the United States, hereby respectfully requests reconsideration of the Commission's freeze on acceptance of applications for use of channels in the 896-901/935-940 MHz bands, which freeze was adopted by Public Notice on September 17, 2004 (DA-04-3013) ("Notice"). SBT requests, for the reasons provided herein, that the Commission immediately reconsider and set aside its decision to freeze the acceptance of applications for 900 MHz channels and to take that other action suggested herein.

The Commission's rationale for adopting the freeze is based on its receipt of hundreds of applications from a single entity, ACI 900, Inc., a wholly owned subsidiary of Nextel Communications, Inc. (ACI) Although SBT joins with the Commission and others<sup>1</sup> in its extreme concern regarding this blatant attempt by ACI to consolidate under one entity the future use of the

---

<sup>1</sup> See, Letter comment to Michael Wilhelm from United Telecom Council dated September 23, 2004; Informal Opposition of Verizon Wireless to various applications submitted by ACI 900, Inc. filed September 14, 2004.

900 MHz band, SBT respectfully and strongly urges the Commission to address this problem by means other than the freeze. The effect of the freeze does nothing to ameliorate the agency's concerns and, instead, works as a prejudice against all other *legitimate* applicants and existing users who would require additional spectrum to continue their honest business efforts.

SBT notes that the Commission's justification for the freeze is tied to its *Report and Order*, *Fifth Report and Order*, *Fourth Memorandum Opinion and Order*, and *Order* in WT Docket 02-55 (released August 6, 2004) ("Order"). In its Notice, the Commission stated that "Nextel may require additional 900 MHz authorizations . . . to preserve adequate service to its subscribers." Notice at ¶ 2. And that "additional such filings may compromise Nextel's ability to obtain the necessary "green space" to house some of its systems while the 800 MHz band is reconfigured..." Notice at ¶ 3. However, SBT respectfully directs the Commission's attention to the content of the ACI applications which request use of the channels for internal, non-commercial purposes. Thus, the reported, intended use of the channels by ACI is at odds with the Commission's description and purposes and does not factually support the Commission's treatment of those applications.

Nor can the Commission's justification be found in the plain language of its Order. The Order makes no suggestion that in addition to that 900 MHz spectrum which Nextel was allowed to keep (despite the fact that it has failed to build out to provide any services to the public in accord with the terms of Nextel's licenses), Nextel would also be allowed to further warehouse additional 900 MHz spectrum in a manner which is contrary to existing rule and law. Accordingly, the Notice

acts as an order on reconsideration of the Commission's Order, without the benefit of required notice and comment.

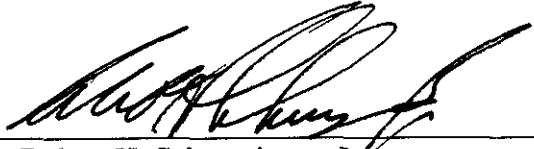
SBT further notes that the Commission's action results in a material change in its Order, which Order does not speak to the availability of 900 MHz spectrum, not presently licensed to Nextel, for use in the manner described in the Notice. Accordingly, the freeze appears to violate the Commission's duty to engage in open and public notice and comment rule making. It further violates the specific elements of Administrative Procedures Act by its reliance on an order that has not been published in the federal register for the mandated thirty-day period and, thus, is ineffective legally. Yet, despite this obvious lacuna in legality, the Commission's action effectively ignores the dictates of the APA and the clear language of its Order, in favor of an impermissible, selective action that arbitrarily favors the interests of a disingenuous applicant over the needs of legitimate PLMR applicants and licensees.

That the ACI applications are wholly defective and disingenuous on their face is admitted by the Commission's explanation for adoption of the freeze. The Commission's justification cannot be reconciled with the averments within each application that the channels will be used for non-commercial, internal purposes. Thus, the Commission has found that the ACI applications are, in essence, a sham and should, therefore, be subject to dismissal as, in their totality, a clear abuse of the Commission's processes. That the Commission's freeze notice attempts to legitimize these errant applications is quite unfortunate, but the agency's Notice cannot modify by fiat the

Commission's existing rules, while ignoring the protections under the APA and the long history of Commission case law that discourages these types of spectrum warehousing.

For the reasons stated above, SBT respectfully requests that the Commission reconsider its Notice freezing acceptance of 900 MHz applications, and to take such actions against the ACI 900, Inc. applications in accord with rule and law.

Respectfully submitted,  
SMALL BUSINESS IN TELECOMMUNICATIONS

By   
Robert H. Schwaninger, Jr.

Schwaninger & Associates, P.C.  
1331 H Street, N.W., Suite 500  
Washington, D.C. 20005  
(202) 347-8580  
sa-lawyers.net